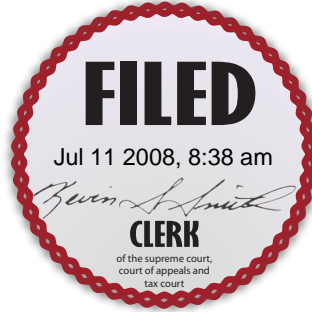


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

GARY UNDERWOOD,
Appellant-Defendant,

VS.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 49A05-0712-CR-702

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause No. 49G22-0708-FB-161372, 49G22-0707-FC-152480

July 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Gary Underwood appeals his sentences for three counts of Class C felony robbery.¹ Finding no abuse of discretion, we affirm.

FACTS AND PROCEDURAL HISTORY

On July 29, 2007, Underwood entered a Village Pantry on East Washington Street and took money from the clerk. Later that day, Underwood entered a Village Pantry of South Keystone and took \$180 from the cash register. A few hours later, Underwood entered a Speedway gas station on Madison Avenue and took money from the register. Indianapolis Metropolitan Police apprehended Underwood at the Speedway station.

Under Cause Number 49G22-0708-FB-161372, the State charged Underwood with Class C felony attempted robbery, Class B felony robbery, and two counts of Class C felony robbery. Under Cause Number 49G22-0707-FC-152480, the State charged Underwood with Class C felony robbery, Class D felony resisting law enforcement, and Class A misdemeanor resisting law enforcement. Underwood agreed to plead guilty to three counts of Class C felony robbery, and State agreed to dismiss the remaining charges. The plea agreement capped the initial executed portion of the sentence for each count at six years² and gave the court discretion to determine whether the sentences would be served concurrently or consecutively.

For the two Class C felony convictions under cause FB-161372, the court sentenced Underwood to six years for one robbery, to be served consecutive to eight years, with four suspended, for the other robbery. Under cause FC-152480, the court

¹ Ind. Code § 35-42-5-1.

² Ind. Code § 35-50-2-6 provides: “A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.”

ordered Underwood to serve six years consecutive to the sentences in FB-161372. Accordingly, Underwood's cumulative sentence was twenty years, with four suspended to probation.

DISCUSSION AND DECISION³

Sentencing decisions “rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on other grounds* 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2005)). For example, a trial court abuses its discretion in sentencing a defendant if: (1) the court failed to provide any sentencing statement; (2) the sentencing statement is not supported by the record; (3) the statement omits aggravators or mitigators clearly supported by the record and advanced by a party; or (4) the court's reasons for the sentence are improper

³ Our ability to address Underwood's arguments was impeded by the lack of organization in his brief. Not only do the two issues he presents allege the same error and request the same relief, but within each argument section, Underwood inserts statements suggesting additional issues without developing those arguments to the extent that we could address them. For example, Underwood asserts his sentence is inappropriate, but provides no analysis of the nature of his offense or his character. (See Appellant's Br. at 9.) Underwood claims there were “other mitigators like [his] drug addiction, his family or his employment,” (*id.* at 6), but he provided no citation to evidence in the record that would demonstrate those mitigators were supported and significant. See *Anglemyer*, 868 N.E.2d at 493 (“An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.”). Such arguments are waived. See Indiana Appellate Rule 46(A)(8) (requiring cogent argument supported by citation to the record). Moreover, we note that at sentencing, counsel stated: “We would offer today as potential mitigators his remorse, his acceptable [sic] of responsibility and readiness to be held accountable for his actions.” (Tr. at 25.) Because Underwood did not assert his drug addiction, his family or his employment as mitigators at sentencing, we could not find the court abused its discretion in failing to consider them. See *Anglemyer*, 868 N.E.2d at 492 (“the trial court does not abuse its discretion in failing to consider a mitigating factor that was not raised at sentencing”).

as a matter of law. *Id.* at 490-91.

Underwood argues “the trial court exerted a manifest abuse of its discretion when it improperly weighed the aggravating and mitigating circumstances.” (Appellant’s Br. at 5.) However, we are no longer permitted to find an abuse of discretion in the trial court’s weighing and balancing of aggravators and mitigators. *Anglemyer*, 868 N.E.2d at 491 (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”).

Because the court found the aggravators outweighed the mitigators,⁴ we cannot say the court abused its discretion in ordering the sentences served consecutively.

Affirmed.

MATHIAS, J., and VAIDIK, J., concur.

⁴ In light of this finding, Underwood’s reliance on *White v. State*, 847 N.E.2d 1043 (Ind. Ct. App. 2006), is misplaced. In *White*, we held a court abused its discretion by ordering consecutive sentences when the court’s balancing of aggravators and mitigators led it to impose a reduced sentence.